

1 participate in good faith, sent no agent to the mediation with authority to modify the loan, and
2 failed timely to provide required documents to the mediator. (*See id.*). Plaintiffs ask the Court to
3 lower the interest rate to no higher than 6.5% and extend the loan term to thirty years, with a
4 monthly payment not to exceed \$500 and with any past due amount to be amortized into the loan;
5 to fine the USDA; and to award fees, costs, and lost wages. (*See id.* 7–9). Defendant removed
6 and moved to dismiss. The Court denied the motion to dismiss and remanded to state court,
7 ruling that jurisdiction over PJR was exclusive in the state district court and abstaining under
8 *Burford* even considering that there may be concurrent jurisdiction. The USDA has asked the
9 Court to reconsider.

10 **II. DISCUSSION**

11 Defendant argues that the present action is barred by the derivative jurisdiction doctrine,
12 that *Burford* abstention does not apply where federal law preempts state law, and that Plaintiffs
13 failed to oppose Defendant’s motion to dismiss.

14 The Court denies the motion. First, Plaintiffs’ failure to respond to Defendant’s motion
15 cannot have created subject matter jurisdiction in this Court if it was otherwise lacking. *See Ins.*
16 *Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (citing
17 *California v. LaRue*, 409 U.S. 109 (1972)) (“[N]o action of the parties can confer subject-matter
18 jurisdiction upon a federal court. Thus, consent of the parties is irrelevant.”).

19 Second, Defendant argues that because the state court itself lacked jurisdiction over this
20 action, this Court cannot have acquired it by removal. Defendant’s recitation of the rule is sound.
21 *See Gen. Inv. Co. v. Lake Shore & M.S. Ry. Co.*, 260 U.S. 261, 288 (1922) (“When a cause is
22 removed from a state court into a federal court, the latter takes it as it stood in the former. A
23 want of jurisdiction in the state court is not cured by the removal, but may be asserted after it is
24 consummated.”); *Rodis v. Seidlin*, 656 F.3d 610, 615 (7th Cir. 2011). Defendant argues from
25 here that the state court had no jurisdiction (because jurisdiction was preempted by the Federal

1 Tort Claims Act or sovereign immunity), that the federal court therefore had no removal
2 jurisdiction, and that the federal court should therefore dismiss for lack of jurisdiction. But
3 whether this Court lacks jurisdiction because jurisdiction in the state court was exclusive (as the
4 Court ruled) or because jurisdiction in the state court was lacking altogether (as Defendant
5 argues), dismissal is not an option under the removal statute. A district court must remand a
6 removed case if it lacks subject matter jurisdiction, period. 28 U.S.C. 1447(c) (“If at any time
7 before final judgment it appears that the district court lacks subject matter jurisdiction, the case
8 shall be remanded.”). Defendant may presumably seek dismissal in the state court, whether for
9 lack of jurisdiction or for some other reason, but Defendant’s preemption and immunity
10 arguments must be presented to the state court on remand. Ultimately, Defendant asks the Court
11 in substance to enjoin the PJR in state court directly, which this Court may not do. *See* 28 U.S.C.
12 § 2283.


13 Third, Defendant argues that *Burford* abstention is not appropriate here because federal
14 law governing its ability to participate in the FMP preempts any state concerns. The Court finds
15 this argument more persuasive than the others but will not reconsider, as there is simply no
16 subject matter jurisdiction over this case.

17 CONCLUSION

18 IT IS HEREBY ORDERED that the Motion to Reconsider (ECF No. 18) is DENIED.

19 IT IS SO ORDERED.

20 DATED: This 6th day of March, 2013.

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23 ROBERT C. JONES
24 United States District Judge
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